

MASTER SERVICES AGREEMENT
Yakima County Technology Services - Secure Data Center

THIS MASTER SERVICES AGREEMENT (the "Agreement") is made on the Effective Date below by and between the parties written below (hereinafter collectively referred to as the "Parties" or individually as the "Party").

YAKIMA COUNTY TECHNOLOGY SERVICES -
("Host")
(a Washington State governmental entity)

CITY OF EDMONDS
("Entity")
(a Washington State governmental entity)

Attention: George Helton
Address: 128 North 2nd Street
Yakima, WA 98901
Phone: (509) 574 - 2005
Fax: (509) 574 - 2001
Email: George.helton@co.yakima.wa.us

Attention: Scott James
Address: 121 5th Ave North
Edmonds, WA 98020
Phone: 425.775.7743
Fax:
Email: scott.james@edmondswa.gov

Effective Date: October 1, 2014

Type(s) of Service:

- ☐ Primary Data Center
- ☐ On-Line Production Remote Data Center
- ☐ On-Line Idle Data Center
- ☐ Near-Line Data Storage
- ☐ Off-Line Data Storage
- ☐ Web Host
- ☐ ASP Hosting
- ☒ Hot-Site Data Center

Total Contract Amount: \$US 2,100 / year
(An estimated total which includes both recurring and non-recurring amounts)

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AGREEMENT

WHEREAS, Entity (i.e., corporation, not-profit or government agency) desires to have Host provide services as set forth in the Statement of Work ("SOW") set forth in Exhibit A attached to and under the terms and conditions of this Agreement (the "Services"); and,

WHEREAS, Host agrees to provide Services to Entity within its **Secure Data Center** facility (hereinafter "SDC," "Site" or "Facility").

NOW, THEREFORE, for the mutual consideration set forth herein, the adequacy of which is hereby acknowledged, Entity and Host, intending to be legally bound, hereby agree as follows:

1. SERVICES. Host shall provide all required Services, including services commercially reasonably required to support the Services, as set forth in Exhibit A and in accordance with this Agreement and all Exhibits, Schedules and Attachments thereof.

2. COMPENSATION. Entity agrees to pay Host for the Services in accordance with this Agreement and all Exhibits, Schedules and Attachments thereof and the following terms and conditions:

(a) Payments. Initial payment for Services shall be due on the first day of the month immediately following the Effective Date of this Agreement. Unless otherwise stated in this Agreement, Entity shall make payments to Host on a monthly basis until the Agreement or applicable Statement of Work is terminated or expires. Final payment shall be due no later than 30 days after termination or expiry of this Agreement or the applicable Statement of Work. Entity may pro rate its payments for partial months, subject to the prior review and approval of Host. Upon receipt of a notice of termination, Host shall inform Entity of the extent to which performance of services form the purpose of establishing any final amounts due, if any.

(b) Remittance. Payment for any charges is due upon the date of the invoice or the first day of each month as applicable. All payments must be in U.S. Dollars. Any charge that is not paid within thirty (30) days from the date of the invoice shall be subject to an interest rate of 1.5% per month, or the maximum allowed by law. Entity shall be responsible for all costs of collection, including reasonable attorney's fees and court costs, in event of a default for nonpayment of any amounts due Host. Entity shall remit all payments to: "Yakima County Technology Services". Entity shall make payment by Entity check, mailed to Yakima County, 128 North 2nd Street, Yakima, WA, 98901, to the attention of Yakima County Technology Services.

(c) Transition; Refunds. Upon expiry or termination of this agreement and subject to prior approval of Host, Entity may be eligible for a refund in part or in whole for the final month of the Agreement based on difference in any amount paid in advance by Entity and the pro rated amount applied to the Services provided. However, Entity will not be eligible to receive a refund for any of the following: (i) setup fees or any fees other than the monthly or yearly recurring hosting fees; (ii) fees resulting from extra services or "add-ons" not classified as monthly or yearly recurring fees; (iii) late cancellation; (iv) slow connection caused by Entity's network or Entity's network service provider; (v) problems in Services caused by Entity's ignorance; (vi) InterNIC delays; (vii) termination for any of the causes set forth in Section 3(c); or (viii) any other reason not provided for in this Section 2(c). In addition, Entity is obligated to pay Host for any non-recurring costs incurred by Host, including but not limited to set-up or take down of Entity's equipment, and Host reserves the right to offset any refunds against any such costs not yet paid by Entity.

3. TERM AND TERMINATION.

(a) Term. This Agreement shall commence on the Effective Date and shall continue for a period of no less than one (1) year, unless sooner terminated as provided herein, and will automatically continue on a month to month basis thereafter unless either Party provides fifteen (15) calendar days written notice of its intent to terminate or cancel. The term of any right or license or proprietary rights granted to Entity under this Agreement shall run concurrently with this Agreement or be for the full term of such proprietary rights. Either Party may terminate this Agreement without cause upon fifteen (15) calendar days written notice.

(b) Termination for Convenience. Host may terminate this Agreement at its sole discretion or any or all services hereunder, or any portion thereof, upon fifteen (15) calendar days' written notice to Entity.

(c) Termination for Breach. Either Party may terminate this Agreement upon fifteen (15) calendar days' notice to the other Party in the event of a breach of any material provision of this Agreement by the other Party, provided that, during the fifteen-day period, the breaching Party fails to cure such breach or, should the breach not be curable within said fifteen-day period, the breaching Party has not initiated steps to cure such breach. In addition, Host may immediately terminate this Agreement for any of the following causes without possibility of cure, and in such case Host reserves the right to immediately terminate Entity's account and suspend or cancel Services, and for such suspension or cancellation Entity shall not be eligible to receive a refund and may be subject to additional charges: (i) failure on the part of Entity to make payment in accordance with Section 3 of this Agreement for a period of fifteen (15) calendar days after payment is due; (ii) interference with the operation or security of Host's facility or equipment or another Entity's equipment or software; (iii) malicious or negligent acts on the part of the Entity, its employees, agents or subcontractors, which cause harm to Host or another Entity; (iv) any violations of security, confidentiality or proprietary rights of the Host or another Entity on the part of the Entity, its employees, agents or subcontractors; (v) any violation of Host's Terms of Use, a copy of which is set forth herein under Exhibit F; the acceptance of which constitutes an acceptance of any fines, penalties or service charges that might arise out of violation of these policies; (vi) commencement of any lawsuit or proceeding against Entity arising from or relating to its use of the Services, whether or not such suit names Host as a party or seeks any recovery from Host; (vi) Entity becoming insolvent or filing for bankruptcy protection; or (vii) assignment of this Agreement by Entity to any other entity without the prior approval of the Host, including assignment to an agent for the purpose of receivership.

(d) Transition; Removal of Equipment. Entity or its designated agent or subcontractor shall take down and remove from Hosts premises all of its equipment and hardware, including resident software, within one (1) calendar week of the effective date of termination or expiry of this Agreement. Should Entity fail to remove such equipment and hardware within this one-week period, Host may at its discretion forfeit any refunds due to Entity. If equipment or hardware has not been removed from Host's premises within one (1) calendar month of the effective date of termination or expiry of this Agreement, the equipment or hardware shall be considered abandoned and Host may at its discretion take possession of it for disposition, sale and/or disposal.

4. PROPRIETARY INFORMATION. It is understood that either Party may use its own previously developed data, documentation, software, ideas, concepts, materials, or information, in whatever form, in performing its services hereunder (collectively referred to as "Preexisting Works"). Insofar as such Preexisting Works were not first produced or created solely and exclusively for performance of work or the rendition of Services under this Agreement, but are necessary or useful for, or are used in connection with the Services, any and all right, title, and interest in Preexisting Works shall remain the sole and exclusive property of the Party who created such works. The Parties mutually grant a nonexclusive license to use each other's Preexisting Works when used solely and exclusively in combination with the Services. Neither Party shall have any other rights, whatsoever, with respect to use of the other Party's Preexisting Works.

(a) It is understood that in performing its services, Host may have occasion to develop new and unique work products for use in conjunction with the Services. The Parties agree that all such work products shall be considered "Works Made for Hire" as defined under the U.S. Copyright Laws, and Host shall be deemed the sole and exclusive owner of all right, title, and interest therein, including all copyright and proprietary rights relating thereto. All such work performed by Host and any supporting documentation therefor and, as such, shall be owned by and for the benefit of the Host. For the purpose of this Agreement "Work Product(s)" shall mean all data, documentation, software, ideas, concepts, materials, and information, in whatever form, first produced or created by or for Host, which relate solely and exclusively to the performance of Services under this Agreement (hereinafter "Work Product(s)").

(b) As necessary for performance of the Services, Host will and hereby does assign to Entity for no additional consideration, all right, title, and interest that it may possess in Work Products including, but not limited to, all Host and proprietary rights relating thereto. Upon request, Host will take such steps as are reasonably necessary to enable Entity to record such assignment.

5. CONFIDENTIALITY.

The terms and conditions set forth in the Non-disclosure Agreement between the Parties included in this Agreement under Exhibit C shall apply to this Agreement and are incorporated in this section by this reference.

6. REPRESENTATIONS AND WARRANTIES.

(a) By Host:

(i) Host has full rights to enter into and perform according to the terms of this Agreement, and that such performance will not violate any agreement or obligation between Host and any third party. Entity understands that Host is currently providing one or more clients with similar Services. Provided that those Services do not interfere or conflict with Host's obligations under this Agreement, provision of those Services shall not constitute a violation of this provision of the Agreement. Host reserves the right to restrict access to Host's facility in its own discretion.

(ii) Host has and will have full and sufficient right to assign or grant the rights and/or licenses granted in support of Services this Agreement, and such grant(s) do not and will not infringe any patents, copyrights, trademarks, or other intellectual property rights (including trade secrets), privacy, or similar rights of any person or entity, nor has any claim (whether or not embodied in an action, past or present) of such infringement been threatened or asserted, nor is such a claim pending against Host or, insofar as Host is aware, against any entity from which Host has obtained such rights.

(iii) Host Services (A) shall be provided in a workmanlike manner and with professional diligence and skill; (B) all website-related Services will function under standard HTML conventions; (C) all Services will conform to the specifications and functions set forth in this Agreement; and (D) Host will perform all work called for by this Agreement. This warranty shall extend only for the life of this Agreement. This warranty does not cover failures in Entity-provided equipment or software, Entity's website, Entity's website links that change over time, Entity's webpages that become obsolete over time, Entity's content that becomes outdated over time, or other changes that do not result from any error on the part of Host.

(iv) Host will take every step to ensure that the Facility and Services are available to users on demand. Notwithstanding same, Host is not liable for loss of internet service, internet access, or data for any reason including, but not limited to, any unforeseen or preventable failure related to changes in the internet infrastructure or traffic capabilities, failure or breakdown of the internet, the World Wide Web, any related telecommunications equipment or systems, or any computer hardware or software.

(v) Host shall comply with all terms relating to Confidential Information and Entity understands that Host may, if compelled by superceding law, disclose information to a governmental agency upon request by that agency. In such case Host shall not be liable for any violation of the Mutual Non-disclosure Agreement between the Parties, Sections 4 or 5 of this Agreement, or any other applicable terms and conditions of this Agreement.

EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, HOST MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO SERVICES PROVIDED, AND HOST SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THIS INCLUDES LOSS OF DATA, WHETHER RESULTING FROM HARDWARE FAILURES, DELAYS ON DELIVERIES, WRONG DELIVERY, ANY AND ALL SERVICE INTERRUPTIONS CAUSED BY HOST AND ITS EMPLOYEES, SECURITY VIOLATIONS AND ANY OTHER CAUSE.

(b) By Entity:

(i) Entity has full rights to enter into and perform according to the terms of this Agreement,

and that such performance will not violate any agreement or obligation between Entity and any third party.

(ii) Entity will, at all times relevant to this Agreement, keep any and all license agreements with third parties relevant to the Services in force and in good standing;

(iii) Entity is the legal owner or Lessor of all equipment and hardware to be housed at Host's facility under this Agreement.

(iv) Entity is solely responsible for maintaining its equipment and software. Entity shall maintain all software virus-free and to the extent possible shall incorporate all defenses, shields, programs or other means to ensure that software remains virus-free during performance of Services.

(v) Entity and all of Entity's data complies with all rules, requirements, obligations, laws, statutes, international conventions on use of data, and the terms and conditions of this Agreement.

(vi) Entity and all employees, agents, and contractors of Entity shall comply with the Privacy Policy (Exhibit E), Terms of Use (Exhibit F) and any Facilities Use Policies which may be published by the SDC from time to time.

(vii) Entity will not permit the use or sublicense of any of Entity's services or rights under this Agreement.

ENTITY ACKNOWLEDGES THAT IT HAS READ AND FULLY UNDERSTANDS THE REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS SECTION 6(b).

7. INDEMNIFICATION, INSURANCE AND PROTECTION OF PROPERTY.

(a) **Indemnification by Entity.** Entity shall indemnify and hold harmless Yakima County, its directors, officers, employees and agents from and against all actions, causes of action, liabilities, claims, suits, judgments, liens, awards and damages of any kind and nature whatsoever for losses due to the Services, damages due to software viruses or service interruptions due to malicious acts, property damage, personal injury or death (including without limitation injury to or death of employees of Entity or any subcontractor thereof) and expenses, costs of litigation and counsel fees related thereto or incident to establishing the right to indemnification, arising out of or in any way related to the Services, the performance thereof by Entity or any subcontractor thereof or other third parties, including, without limitation, the provision of Services, personnel, facilities, equipment, support, supervision or review. The foregoing indemnity shall apply only to the extent of the negligence of Entity, any subcontractor thereof, or their respective employees. In no event shall Entity's obligations hereunder be limited to the extent of any insurance available to or provided by Entity or any subcontractor thereof. Entity expressly waives any immunity under industrial insurance, whether arising out of statute or source, to the extent of the indemnity set forth in this paragraph (a).

(b) **Insurance.** Entity shall comply with the Additional Terms Regarding Insurance for Work set forth in Exhibit D.

(c) **Duty to Protect Property.** At all times Entity shall, and ensure that any subcontractor thereof shall, use suitable precautions to prevent damage to Host's or other parties' property. If any such property is damaged by the fault or negligence of Entity or any subcontractor thereof, Entity shall, at no cost to Host, promptly and equitably reimburse Host or the other party for such damage or repair or otherwise make good such property to Host's or the other party's satisfaction. If Entity fails to repair or otherwise make good such property, Host or other party may do so and recover from Entity the cost thereof.

8. TAXES.

Entity shall be responsible for payment of all sales and use taxes applicable under this Agreement.

9. OTHER TERMS AND CONDITIONS.

(a) **Force Majeure.** Neither Party will be liable for, or will be considered to be in breach of or default under this Agreement on account of, any delay or failure to perform as required by this Agreement as a result of any causes or conditions that are beyond such Party's reasonable control and that such Party is unable to overcome through the exercise of commercially reasonable diligence. If any force majeure event occurs, the affected Party will give prompt written notice to the other Party and will use commercially reasonable efforts to minimize the impact of the event.

(b) **Relationship of the Parties.** Host, in rendering performance under this Agreement, shall be deemed an independent contractor and nothing contained herein shall constitute this arrangement to be employment, agency, a joint venture, or a partnership.

(c) **Notices.** Any notice required to be given under this Agreement shall be in writing and delivered personally to the other designated Party at the above stated address or mailed by certified, registered or Express mail, return receipt requested or by Federal Express. Either Party may change the address to which notice or payment is to be sent by written notice to the other Party.

(d) **Governing Law; Venue; Attorney's Fees.** This Agreement shall be governed in accordance with the laws of the State of Washington and Entity agrees that any disputes under this Agreement shall be resolved by litigation in the U.S. Federal District Court for the Eastern District of Washington, sitting in Spokane, Washington, unless no federal jurisdiction exists, which in such event litigation shall be brought in the State Superior Court in Yakima, Washington. Entity agrees to accept service of process by mail, and hereby waive any jurisdictional or venue defenses otherwise available to it. In any action to enforce any right or remedy under this Agreement or to interpret any provision of this Agreement, the prevailing Party will be entitled to recover its costs, including reasonable attorneys' fees.

(e) **Binding Agreement.** The provisions of the Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, their heirs, administrators, successors and assigns.

(f) **Assignment.** Neither Party may assign this Agreement nor the rights and obligations thereunder to any third party without the prior express written approval of the other Party, which shall not be unreasonably withheld.

(g) **Waiver.** No waiver by either Party of any default shall be deemed as a waiver of prior or subsequent default of the same of other provisions of this Agreement.

(h) **Severability.** If a court of competent jurisdiction hereof holds any term, clause or provision invalid or unenforceable, such invalidity shall not affect the validity or operation of any other term, clause or provision and such invalid term, clause or provision shall be deemed to be severed from the Agreement.

(i) **Special Provisions.** Certain Special Provisions are included in this Agreement under Exhibit A, Attachment 1, and are incorporated herein by this reference and made a part hereof.

(j) **Precedence.** Should there be a conflict between the terms and conditions of any Special Provision, Exhibit, SOW, Attachment or Schedule and the terms and conditions of this Agreement, the terms and conditions of this Agreement shall take precedence.

(k) **Entire Agreement.** This Agreement constitutes the entire understanding of the Parties, and revokes and supersedes all prior agreements between the Parties whether verbal or in writing and is intended as a final expression of their Agreement. It shall not be modified or amended except in writing signed by the Parties hereto and specifically referring to this Agreement. This Agreement shall take precedence over any other documents that may conflict with this Agreement.


IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound hereby, have each caused to be affixed hereto by their hand their signatures on the Effective Date written below.

YAKIMA COUNTY TECHNOLOGY SERVICES

By: 

Title: Director, Technology Services

ENTITY: City of Edmonds

by: 

Title: Mayor

EXHIBIT A, A-1 and/or A-2**STATEMENT OF WORK**

The City of Edmonds will place hardware listed in Exhibit B, into the Yakima County SDC, Secure Data Center. The network connection to this equipment will be over the LGN, Local Government Network.

The City of Edmonds will install the equipment and provide the necessary monitoring of their computer hardware.

Yakima County to provide:

- Security
 - o Card key access
 - o Multiple cameras in the data center
 - o Electronic notification to on call staff when the data center is accessed
- Rack space will be provided as needed
- Replacement of drives in City of Edmonds equipment as needed using City of Edmonds provided drives (see Fee Schedule for rates)
- The data center is designed to keep the temperature within 58 to 75 degrees and humidity within 35 to 50% . The system will notify on call Staff when the environment is outside of those ranges.
- Tier 2 data center which includes
 - o Liebert *Npower* 130kVA Uninterruptible Power Supply
 - o Auxiliary power services provided via a Caterpillar® 450 KW diesel generator with 7 days of autonomous runtime before requiring refueling

SCHEDULE 1 TO EXHIBIT A

FEE SCHEDULE

Description	# U	per U	extension
Nimble SAN CS220	3	\$25	75
Cisco 4938 Switch	1	\$25	25
HP Server DL360	2	\$25	50
Cisco ASA 5510	1	\$25	25
	Cost per month		\$175

Support is available from Yakima County technical staff at the rate per hour of:

Rate Time of Day

\$ 85 Normal business hours, Monday – Friday, 8am – 5pm

\$150 Outside of normal business hours, including holidays

ATTACHMENT 1 TO EXHIBIT A
SPECIAL PROVISIONS

NONE

EXHIBIT B

LIST OF EQUIPMENT AND SOFTWARE

Quantity 1, Nimble SAN CS220, 2U

Quantity 1, Cisco 4938 Switch, 1U

Quantity 1, HP Server DL360, 1U

Quantity 1, Cisco ASA 5510, 1 U

EXHIBIT C

MUTUAL NON-DISCLOSURE AGREEMENT

This Mutual Non-Disclosure Agreement (the "Agreement") is made and entered into as of the later of the two signature dates below by and between YAKIMA COUNTY TECHNOLOGY SERVICES, a Washington State governmental entity ("Yakima"), and City of Edmonds, a Washington State governmental entity ("Entity").

IN CONSIDERATION OF THE MUTUAL PROMISES AND COVENANTS CONTAINED IN THIS AGREEMENT AND THE MUTUAL DISCLOSURE OF CONFIDENTIAL INFORMATION, THE PARTIES HERETO AGREE AS FOLLOWS:

A. Definition of Confidential Information and Exclusions.

(1) "Confidential Information" means nonpublic information that a Party to this Agreement ("Disclosing Party") designates as being confidential to the Party that receives such information ("Receiving Party") or which, under the circumstances surrounding disclosure ought to be treated as confidential by the Receiving Party. "Confidential Information" includes, without limitation, information in tangible or intangible form relating to and/or including released or unreleased Disclosing Party software or hardware products, the marketing or promotion of any Disclosing Party product, Disclosing Party's business policies or practices, and information received from others that Disclosing Party is obligated to treat as confidential. Except as otherwise indicated in this Agreement, the term "Disclosing Party" also includes all Affiliates of the Disclosing Party and, except as otherwise indicated, the term "Receiving Party" also includes all Affiliates of the Receiving Party. An "Affiliate" means any person, partnership, joint venture, corporation or other form of enterprise, domestic or foreign, including but not limited to subsidiaries, that directly or indirectly, control, are controlled by, or are under common control with a party. Prior to the time that any Confidential Information is shared with an Affiliate who has not signed this Agreement, the Receiving Party that executed this Agreement below (the "Undersigned Receiving Party") shall have entered into an appropriate written agreement with that Affiliate sufficient to enable the Disclosing Party and/or the Undersigned Receiving Party to enforce all of the provisions of this Agreement against such Affiliate.

(2) Confidential Information shall not include any information, however designated, that: (a) is or subsequently becomes publicly available without Receiving Party's breach of any obligation owed Disclosing Party; (b) became known to Receiving Party prior to Disclosing Party's disclosure of such information to Receiving Party pursuant to the terms of this Agreement; (c) became known to Receiving Party from a source other than Disclosing Party other than by the breach of an obligation of confidentiality owed to Disclosing Party; or (d) is independently developed by Receiving Party.

B. Obligations Regarding Confidential Information

(1) Receiving Party shall:

(a) Refrain from disclosing any Confidential Information of the Disclosing Party to third parties for five (5) years following the date that Disclosing Party first discloses such Confidential Information to Receiving Party, except as expressly provided in Sections B(2) and B(3) of this Agreement;

(b) Take reasonable security precautions, at least as great as the precautions it takes to protect its own confidential information, but no less than reasonable care, to keep confidential the Confidential Information of the Disclosing Party;

(c) Refrain from disclosing, reproducing, summarizing and/or distributing Confidential Information of the Disclosing Party except in pursuance of Receiving Party's business relationship with Disclosing Party, and only as otherwise provided hereunder; and

(d) Refrain from reverse engineering, decompiling or disassembling any software code and/or pre-release hardware devices disclosed by Disclosing Party to Receiving Party under the terms of this Agreement, except as expressly permitted by applicable law.

(2) Receiving Party may disclose Confidential Information of Disclosing Party in accordance with a judicial or other governmental order, provided that Receiving Party either (a) gives the undersigned Disclosing Party reasonable notice prior to such disclosure to allow Disclosing Party a reasonable opportunity to seek a protective order or equivalent, or (b) obtains written assurance from the applicable judicial or governmental entity that it will afford the Confidential Information the highest level of protection afforded under applicable law or regulation. Notwithstanding the foregoing, the Receiving Party shall not disclose any computer source code that contains Confidential Information of the Disclosing Party in accordance with a judicial or other governmental order unless it complies with the requirement set forth in subsection (a) of this Section B(2).

(3) The undersigned Receiving Party may disclose Confidential Information only to Receiving Party's employees and consultants on a need-to-know basis. The undersigned Receiving Party will have executed or shall execute appropriate written agreements with its employees and consultants sufficient to enable Receiving Party to enforce all the provisions of this Agreement.

(4) Receiving Party shall notify the undersigned Disclosing Party immediately upon discovery of any unauthorized use or disclosure of Confidential Information or any other breach of this Agreement by Receiving Party and its employees and consultants, and will cooperate with Disclosing Party in every reasonable way to help Disclosing Party regain possession of the Confidential Information and prevent its further unauthorized use or disclosure.

(5) Receiving Party shall, at Disclosing Party's request, return all originals, copies, reproductions and summaries of Confidential Information and all other tangible materials and devices provided to the Receiving Party as Confidential Information, or at Disclosing Party's option, certify destruction of the same.

C. Remedies

The parties acknowledge that monetary damages may not be a sufficient remedy for unauthorized disclosure of Confidential Information and that Disclosing Party shall be entitled, without waiving any other rights or remedies, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction.

D. Other Terms & Conditions

(1) All Confidential Information is and shall remain the property of Disclosing Party. By disclosing Confidential Information to Receiving Party, Disclosing Party does not grant any express or implied right to Receiving Party to or under any patents, copyrights, trademarks, or trade secret information except as otherwise provided herein. Disclosing Party reserves without prejudice the ability to protect its rights under any such patents, copyrights, trademarks, or trade secrets except as otherwise provided herein.

(2) In the event that the Disclosing Party provides any computer software and/or

hardware to the Receiving Party as Confidential Information under the terms of this Agreement, such computer software and/or hardware may only be used by the Receiving Party for evaluation and providing Feedback (as defined in Section 5 of this Agreement) to the Disclosing Party. Unless otherwise agreed by the Disclosing Party and the Receiving Party, all such computer software and/or hardware is provided "AS IS" without warranty of any kind, and Receiving Party agrees that neither Disclosing Party nor its suppliers shall be liable for any damages whatsoever arising from or relating to Receiving Party's use of or inability to use such software and/or hardware.

(3) The parties agree to comply with all applicable international and national laws that apply to (a) any Confidential Information, or (b) any product (or any part thereof), process or service that is the direct product of the Confidential Information, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments.

(4) The terms of confidentiality under this Agreement shall not be construed to limit either the Disclosing Party or the Receiving Party's right to independently develop or acquire products without use of the other party's Confidential Information. Further, the Receiving Party shall be free to use for any purpose the residuals resulting from access to or work with the Confidential Information of the Disclosing Party, provided that the Receiving Party shall not disclose the Confidential Information except as expressly permitted pursuant to the terms of this Agreement. The term "residuals" means information in intangible form, which is retained in memory by persons who have had access to the Confidential Information, including ideas, concepts, know-how or techniques contained therein. The Receiving Party shall not have any obligation to limit or restrict the assignment of such persons or to pay royalties for any work resulting from the use of residuals. However, this sub-paragraph shall not be deemed to grant to the Receiving Party a license under the Disclosing Party's copyrights or patents.

(5) This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. It shall not be modified except by a written agreement dated subsequent to the date of this Agreement and signed by both parties. None of the provisions of this Agreement shall be deemed to have been waived by any act or acquiescence on the part of Disclosing Party, the Receiving Party, their agents, or employees, but only by an instrument in writing signed by an authorized employee of Disclosing Party and the Receiving Party. No waiver of any provision of this Agreement shall constitute a waiver of any other provision(s) or of the same provision on another occasion.

(6) If either Disclosing Party or the Receiving Party employs attorneys to enforce any rights arising out of or relating to this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs. This Agreement shall be construed and controlled by the laws of the State of Washington, and the parties further consent to exclusive jurisdiction and venue in the U.S. Federal Court for the Eastern District of Washington, sitting in Spokane, Washington, unless no federal subject matter jurisdiction exists, in which case the parties consent to the exclusive jurisdiction and venue in the Superior Court of Yakima County, Washington. Entity waives all defenses of lack of personal jurisdiction and forum non-conveniens. Process may be served on either party in the manner authorized by applicable law or court rule.

(7) This Agreement shall be binding upon and inure to the benefit of each party's respective successors and lawful assigns; provided, however, that neither party may assign this Agreement (whether by operation of law, sale of securities or assets, merger or otherwise), in whole or in part, without the prior written approval of the other party. Any attempted assignment in violation of this Section shall be void.

(8) If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

(9) Either party may terminate this Agreement with or without cause upon ninety (90) days prior written notice to the other party. All sections of this Agreement relating to the rights and obligations of the parties concerning Confidential Information disclosed during the term of the Agreement shall survive any such termination.

(10) Host and its employees do not accept or consider unsolicited ideas, including ideas for new advertising campaigns, new promotions, new products or technologies, processes, materials, marketing plans or new product names, any original creative artwork, samples, demos, or other works. If Entity sends Host any such ideas or materials, Host will not consider nor treat such ideas and materials as confidential or proprietary under this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

ENTITY: City of Edmonds

Address:

By:

Name: Dave Earling

Title: Mayor

Date: 9/17/2014

YAKIMA COUNTY TECHNOLOGY SERVICES

128 North 2nd Street
Yakima, WA 98901

By:

Name: George Helton

Title: Director Technology Services

Date: _____

EXHIBIT D

INSURANCE REQUIREMENTS AND CERTIFICATE

This Exhibit "D" is a continuation of that certain MASTER SERVICES AGREEMENT between the Yakima County Technology Services ("Host"), and City of Edmonds ("Entity"), and specifies the insurance requirements of Entity under the Agreement.

1. **INSURANCE.**

(a) **General.** Prior to the commencement of this Agreement, and throughout the entire Term of this Agreement, Entity shall procure and maintain the insurance described below. Such insurance shall be in a form and with insurers acceptable to Host and shall comply with the following minimum requirements.

(b) **Commercial General Liability.** Entity shall obtain and maintain a commercial general liability insurance policy with reputable insurers reasonably acceptable to Host with policy limits of not less than \$2,000,000 each occurrence for bodily injury and \$2,000,000 each occurrence for damage to property, or, alternatively, \$2,000,000 combined single limit each occurrence for bodily injury and property damage combined. The policy shall be the "occurrence" form and shall include coverage for premises and operations, contractual liability (including insurable contractual liability assumed in this Agreement), broad form property damage, and products and completed operations. The policy shall name Host as an additional insured to the extent of the contractual liability assumed by Entity in this Agreement, and shall contain a severability of interests provision in favor of the additional insureds.

(c) **Automobile Liability.** If licensed vehicles will be used by Entity during the Term of this Agreement, and at all times when such vehicles are operated on the premises of, or on behalf of, Host, Entity shall maintain automobile liability insurance covering all owned, rented, and non-owned vehicles with policy limits of not less than \$1,000,000 combined single limit for bodily injury and property damage combined, or, if limits are obtained on a per person and per accident basis, not less than \$1,000,000 per person and per accident for bodily injury, and \$500,000 per accident for property damage.

(d) **Workers' Compensation.** Entity shall at all times comply fully with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations, if any. Such workers' compensation and occupational disease requirements shall include coverage for all employees of Entity suffering bodily injury (including death) by accident or disease, which arises out of or in connection with the performance of this Agreement by Entity. Except to the extent prohibited by law, Entity's program(s) for compliance with workers' compensation and occupational disease laws, statutes, and regulations shall provide for a full waiver of rights of subrogation against Host, its subsidiaries, officers, and employees.

If Entity, or any subcontractor retained by Entity, fails to effect and maintain a program of compliance with applicable workers' compensation and occupational disease laws, statutes, and regulations, and Host incurs liability or fines or is required by law to provide benefits to such employees or to obtain coverage for such employees, Entity shall indemnify Host for such fines, payment of benefits to Entity's or subcontractors' employees or their heirs or legal representatives, and/or the cost of effecting coverage on behalf of such employees. Any amount owed to Host by Entity pursuant to this indemnity may be deducted from any payments owed by Host to Entity for performance of the Agreement.

(e) **Employers Liability.** Entity, in addition to complying with the provisions of Section (d) above, shall maintain coverage for employers' liability with a policy limit of not less than \$1,000,000 per accident. In jurisdictions where commercial insurance of workers' compensation is not permitted, this requirement may be fulfilled through addition of an

"Employers Stop Gap Liability" endorsement to the comprehensive general liability policy required in Section (b) above.

(f) **Professional Liability/Errors & Omissions Liability.** Entity shall maintain policy limits of not less than \$2,000,000 each claim. Such insurance shall include coverage for infringement of proprietary rights of any third party, including without limitation copyright, trade secret and trademark infringement as related to Entity's performance under this Agreement. Throughout the Term of this Agreement, the Professional Liability/Errors & Omissions Liability insurance's retroactive coverage date will be no later than the Effective Date of this Agreement. Upon expiration or termination of this Agreement, Entity will either maintain active policy coverage, or an extended reporting period, providing coverage for claims first made and reported to the insurance Entity within two years after the end of the Agreement.

(g) **General Requirements Applicable to Above Coverages.** The following general requirements shall be applicable to all coverages referenced anywhere in this Section:

(1) The above-referenced insurance policies shall be primary and not contributory to any insurance or program of self-insurance maintained by Host.

(2) Any deductible or retention in excess of \$100,000 per occurrence or accident under any of the above-required coverages shall be subject to the approval of Host prior to the commencement of the Agreement.

(3) All deductibles and premiums associated with the above coverages shall be the responsibility of the Entity.

(4) If, in the opinion of Host, the amount of liability coverage is not adequate by reason of inflationary pressures or experience or the nature and content of Entity's activities, Entity shall increase the amount of insurance coverage as reasonably required by Host.

(5) At the request of Host, Entity shall provide to Host, or make available for Host's review, copies of the insurance policies required herein. Entity reserves the right to delete certain proprietary information not directly related to the provisions of insurance coverage required under this Agreement.

(6) The above referenced insurance limits shall not in any way limit the liability of Entity or the liability of any Entity subcontractor during their performance under this Agreement. Where any subcontractor is retained by Entity as may be authorized by Host in writing, Entity shall either require such subcontractor to assume the same insurance obligations on behalf of Host as are required of Entity herein, or extend its insurance to cover any subcontractor retained by Entity.

(h) **Certificates of Insurance.** Prior to the inception of this Agreement, Entity shall provide to Host certificates of insurance evidencing full compliance with the insurance requirements contained herein. Such certificates shall be kept current throughout the entire period of the Agreement, and shall provide for at least thirty (30) days advance notice to Host if the coverage is to be canceled or materially altered so as not to comply with the foregoing requirements. Where such insurance is to waive rights of subrogation, the certificate shall expressly reflect in writing the insurers' acceptance of such requirements. Failure by Entity to furnish certificates of insurance or failure by Host to request same shall not constitute a waiver by Host of the insurance requirements set forth herein. In the event of such failure on the part of Entity, Host expressly reserves the right to enforce these requirements.

(i) **Self-Assumption.** Any self-insured retention, deductibles and exclusions in coverage in the policies required under this article shall be assumed by, for the account of and at the sole risk of Entity or the subcontractor which provides the insurance and to the extent applicable shall be paid by such Entity or subcontractor. In no event shall the liability of Entity or any subcontractor thereof be limited to the extent of any of the minimum limits of insurance required herein.

2. NOTICE OF LOSS, INJURY OR DAMAGE.

In the event of any "significant" injury to persons or damage to property that occurs on the premises of Host during the performance of this Agreement by Entity or any subcontractor thereof, Entity shall notify Host as promptly as reasonably practical after the occurrence of such injury or damage, and shall provide adequate details to enable Host to investigate the cause of such injury or damage. For the purposes of this provision, the term "significant" shall mean injury to persons that results in hospital treatment of such injury, and for damage to property, any damage or loss of property in excess of Ten Thousand and 00/100 Dollars (\$10,000.00).

3. RISK OF LOSS.

Entity assumes, and shall ensure that all subcontractors thereof and their respective employees assume, the risk of loss due to its actions which impact the operation of Host's facility or operation of other party's equipment located in Host's facility, or destruction of or damage to any property of Host or other parties whether owned, hired, rented, borrowed or otherwise. Entity waives, and shall ensure that any subcontractor thereof and their respective employees waive, all rights of recovery against Host, its subsidiaries and their respective directors, officers, employees and agents for any such loss, or against loss due to destruction of or damage to any property of Entity, any subcontractor or their respective employees, unless the destruction of the property was due to Host negligence.

EXHIBIT E

YAKIMA COUNTY TECHNOLOGY SERVICES - SDC PRIVACY POLICY

This Exhibit "E" is a continuation of that certain MASTER SERVICES AGREEMENT between the Yakima County Technology Services ("Host"), and City of Edmonds ("Entity"), and specifies Host's Privacy Policy under the Agreement.

1. Information About Privacy.

The Yakima County Technology Services, a governmental entity of the State of Washington ("Host") providing services in the Secure Data Center, is committed to protecting the privacy of any user accessing its website and Entity contracting for hosting or colocation services within its Secure Data Center subject to a Master Services Agreement with Host ("Services"). User or Entity may visit most pages on Host's website without giving any information about itself. Sometimes, however, Host may need information to provide Services that User or Entity requests, and this privacy statement explains data collection and use in those situations. This privacy statement only applies to the Services provided by Host and it does not apply to other online or offline Host sites, products or services.

2. Collection and Use of Personal Information.

2.1 Host collects certain information about User's or Entity's computer hardware and software. This information may include, but not be limited to, Entity's IP address, browser type, operating system, domain name, access times and referring Web site addresses. This information is used to help diagnose problems with Host's server, to maintain quality service, and to provide general statistics regarding use of Host's website. Although IP addresses are logged to track Entity's sessions, they are not linked to anything personally identifiable, and User and Entity shall remain anonymous.

2.2 If subscribing on-line, the site's registration form requires User or Entity to provide contact information (e.g. name, e-mail address, telephone number); however, the information gathered is used only to contact User or Entity when necessary and is never shared with any party outside of Host. Other information may be required in the formulation of a Master Services Agreement, however that information shall be protected by the terms and conditions of that agreement.

2.3 Host's website may contain links to other sites. Host is not responsible for the privacy practices or the content of other websites or Internet services providers.

2.4 Host's website may use cookies to deliver content specific to User's or Entity's interests and needs. If User or Entity chooses to not have its browser accept cookies from Host's website, Entity will be able to view the text on its screens; however, User or Entity will not experience a personalized visit nor will User or Entity be able to subscribe to service offerings on this site.

2.5 Host's website may use outside advertising companies to display ads on its site. These ads may contain cookies that collect information by the advertising Entity, and Host will not have access to this information.

2.6 Any personal information collected by Host that identifies User or Entity personally will not be shared with any third parties.

2.7 Host's website has security measures in place to protect the loss, misuse, and alteration of information under Host's control. However, Host shall not be liable for any loss, misuse, and alteration of information that was not under its control at the time of such event.

3. Protection of Children's Personal Information.

Host's website is a publicly available general audience site intended for providing information regarding services provided by Yakima County as well as other information related to the region. Host will not knowingly collect any personal information from or about minors or children. Any information unwittingly collected by Host will be treated in the same manner as set forth under section 2 of this statement.

4. Contact Information.

Any questions about this privacy statement, the practices of this site, or dealings with this website, please contact the Yakima County SDC, helpdesk@co.yakima.wa.us.

5. Changes to this Statement.

Host will occasionally update this privacy statement at its sole discretion. Updates will be posted on Host's website under the "Privacy Policy" link. Host is not required to notify User or Entity of any such changes to this statement.

EXHIBIT F

YAKIMA COUNTY TECHNOLOGY SERVICES - SDC TERMS OF USE

This Exhibit "F" is a continuation of that certain MASTER SERVICES AGREEMENT between the Yakima County Technology Services ("Host"), and City of Edmonds ("Entity"), and specifies Host's Terms of Use under the Agreement.

1. Terms of Use.

1.1 The use of any website hosted by the Host, the Host's website, or any colocation service provided by Host subject to a Master Services Agreement for such services (the "Services") by Entity within Host's Secure Data Center facility (the "SDC") are subject to the following terms of use ("Terms of Use").

1.2 Host reserves the right to update these Terms of Use at any time without notice to Entity. By using the web site, Entity agrees to all of the provisions contained or referred to in these Terms of Use. Entity's use of the web site after any changes are posted to the web site constitutes Entity's acceptance of the changes. The most current version of the Terms of Use can be reviewed by clicking on the "Terms of Use" hypertext link located at the bottom of the Web pages. Noting however that the Terms of Use published on Host's website may include additional terms and conditions.

1.3 Questions or comments regarding Terms of Use should be forwarded to Host at the following address:

helpdesk@co.yakima.wa.us

Tel: (509) 574-2000

Fax: (509) 574-2001

2. Compliance with Law.

2.1 Entity shall not post, transmit, re-transmit or store material on or through any of Services which, in the sole judgment of Host (i) is in violation of any local, state, federal or non-United States law or regulation, (ii) is threatening, obscene, indecent, defamatory or that otherwise could adversely affect any individual, group or entity (collectively, "Persons") or (iii) violates the rights of any Person, including rights protected by copyright, trade secret, patent or other intellectual property or similar laws or regulations including, but not limited to, the installation or distribution of "pirated" or other software products that are not appropriately licensed for use by Entity.

2.2 Entity agrees to indemnify and hold harmless Host from any claims resulting from the use of the Services that damages Entity or any other party, except to the extent the damages result solely from the Host's negligence. Entity shall be responsible for determining what laws or regulations are applicable to its use of the Services.

3. Prohibited Uses of Services.

In addition to the other requirements of these Terms of Use, Entity may only use the Services in a manner that, in Host's sole judgment, is consistent with the purposes of such Services. If Entity is unsure of whether any contemplated use or action is permitted, Entity must first contact Host as provided above. By way of example, and not limitation, uses described below of the Services are expressly prohibited:

3.1 General Uses.

3.1.1 Unauthorized resale of any of the Services.

3.1.2 Pornography and pornographic related merchandising are prohibited under all Host's Services. This includes sites that include links to pornographic content elsewhere. Further examples of unacceptable content or links include pirated software, "hacker" programs, archives of "Warez Sites", game rooms or MUDs, Chat Rooms, IRC Bots, Egg Drop programs, programs designed to send unsolicited advertisements (i.e. "spamware", "spyware", etc.) through email, pop-up ads, or other means, or any kind of illegal software or shareware.

3.1.3 Violations of the rights of any Person protected by copyright, trade secret, patent or other intellectual property or similar laws or regulations, including, but not limited to, the installation or distribution of "pirated" or other software products that are not appropriately licensed for use by Entity.

3.1.4 Actions that restrict or inhibit any Person, whether a customer of Host or otherwise, in its use or enjoyment of any of Host's Services.

3.2 System and Network Uses.

3.2.1 Upload files that contain viruses, Trojan horses, worms, timebombs, cancelbots, corrupted files, or any other similar software or programs that may damage the operation of another's computer or property of another.

3.2.2 Effecting security breaches or disruptions of Internet communication. Security breaches include, but are not limited to, accessing data of which Entity is not an intended recipient or logging into a server or account that Entity is not expressly authorized to access. For purposes of this Section 3.2.2., "disruption" includes, but is not limited to, port scans, flood pings, packet spoofing and forged routing information.

3.2.3 Executing any form of network monitoring which will intercept data not intended for Entity's server.

3.2.4 Circumventing user authentication or security of any host, network or account.

3.2.5 Interfering with or denying service to any user other than Entity's host (for example, denial of service attack).

3.2.6 Using any program/script/command, or sending messages of any kind, designed to interfere with, or to disable, a user's terminal session, via any means, locally or via the Internet.

3.2.7 Creating an "active" full time connection on a Host-provided account by using artificial means involving software, programming or any other method.

3.2.8 Any attempt to circumvent or alter monitoring, bandwidth tracking or utilization reporting, or other actions which have the effect of complicating the normal operational procedures of Host, including but not limited to altering, removing or in any way modifying or tampering with Host created log files.

3.2.9 Any action which Host determines, in its own judgment, will reflect poorly on Host or negatively impact its operations.

3.2.10 Any action which Host deems to be an unacceptable use of resources, business practice or otherwise unacceptable to Host.

3.3 Billing Uses.

3.3.1 Furnishing false or incorrect data on the order form, contract or online application, including fraudulent use of credit card numbers.

3.3.2 Attempting to circumvent or alter the processes any billing procedures or procedures to measure time, bandwidth utilization, or other methods to document "use" of Host's Services.

3.4 Mail Uses.

3.4.1 Sending unsolicited commercial email messages (UCE), including the sending of "junk mail" or other advertising material (including, but not limited to, surveys, contests or any duplicative or unsolicited messages) to individuals who did not specifically request such material, who were not previous customers of Entity or with whom Entity does not have an existing business relationship ("email spam").

3.4.2 Sending UCE referencing an email address for any domain hosted by Host.

3.4.3 Sending UCE referencing a domain hosted by Host.

3.4.4 Sending UCE referencing an IP address hosted by Host.

3.4.5 Posting advertisements on IRC, ICQ, or any other public chat system.

3.4.6 Harassing, stalking, threatening, defaming or other abuses, whether through language, frequency or size of messages, which violate the legal rights (such as rights of privacy and publicity) of others.

3.4.7 Unauthorized use, or forging, of mail header information.

3.4.8 Solicitations of mail for any other E-mail address other than that of the poster's account or service with the intent to harass or to collect replies.

3.4.9 Creating or forwarding "chain letters" or other "pyramid schemes" of any type.

3.4.10 Use of unsolicited email originating from within Host's network or networks of other Internet Service Providers on behalf of, or to advertise, any service hosted by Host, or connected via Host's network.

3.4.11 Activities deemed to be unsolicited marketing efforts or otherwise harassing in any way.

3.5 Usenet Newsgroups Uses.

3.5.1 Posting the same or similar messages to large numbers of Usenet newsgroup ("Newsgroup spams").

3.5.2 Posting chain letters of any type.

3.5.3 Posting encoded binary files to newsgroups not specifically named for that purpose.

3.5.4 Cancellation or superseding of posts other than your own.

3.5.5 Forging of header information.

3.5.6 Solicitations of mail for any other E-mail address other than that of the poster's account or service, with intent to harass or to collect replies.

3.5.7 Use of unsolicited E-mail originating from within Host's network or networks of other Internet Service Providers on behalf of, or to advertise, any service hosted by Host, or connected via Host's network.

4. Security/Software

4.1 Entity agrees to take all steps reasonable, necessary, and prudent to protect Entity's login ID and password

4.2 Entity agrees not to attempt to undermine or cause harm to any server, software, system or Entity of Host

4.3 Entity agrees to maintain Entity's computing equipment responsibly, including running virus software

4.4 Uploading a virus to a Host server will result in account termination, service charges and/or prosecution

4.5 Entity acknowledges that Host cannot provide technical support for any software and/or script that the Entity installs, other than variable name changes. Entity also acknowledges that Host does not supply technical support for browser or development tools. Host supplies technical support for Web hosting issues only. Host shall be the sole arbiter as to what constitutes a "Web host" issue.

5. Violation.

Any attempt to undermine or cause harm to Host server or another Entity's Web presence is strictly prohibited. Any violation of the above Terms of Use will result in grounds for account termination, with no refunds given; Host reserves the right to remove any account without prior notice. Violation of these Terms of Use may result in legal action, service charges or a combination thereof

6. Refusal of Service.

6.1 Host reserves the right to refuse or cancel service in its sole discretion with no refunds in accordance with Section 3 of the Master Services Agreement.

6.2 Failure to follow the Terms of Use may result in immediate account termination.

7. Links to Third-Party Sites.

Host is not responsible for the contents of any linked site or any link contained in a linked site, or any changes or updates to such sites. Host is not responsible for webcasting or any other form of transmission received from any linked site. Host is providing links on its website only as a convenience, and the inclusion of any link does not imply endorsement by Host of that website.